

**NEW YORK STATE
DEPARTMENT OF FINANCIAL SERVICES
PROPOSED
TWENTIETH AMENDMENT TO 11 NYCRR 216
(INSURANCE REGULATION 64)**

UNFAIR CLAIMS SETTLEMENT PRACTICES AND CLAIM COST CONTROL MEASURES

I, Adrienne A. Harris, Superintendent of Financial Services of the State of New York, pursuant to the authority granted by Sections 202 and 302 of the Financial Services Law and Sections 201, 301, 2601, 2618, and 3412 of the Insurance Law, do hereby promulgate the following Twentieth Amendment to Part 216 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Insurance Regulation 64), to take effect upon publication of the Notice of Adoption in the State Register, to read as follows:

(Matter in brackets is deleted; new matter is underlined)

A new section 216.2(f) is added as follows:

(f) During the circumstance described in Insurance Law section 2618(a)(2), the requirements set forth in this Part shall not apply to the extent that they conflict with the requirements set forth in Insurance Law section 2618.

Section 216.7(c)(1)(i) is amended as follows:

(i) The average of the retail values for a substantially similar vehicle as listed in two valuation manuals current at the date of loss and approved by this department. [Manuals approved for use are--The Redbook, published by National Market Reports Inc., and The N.A.D.A. Official Used Car Guide, published by the National Automobile Dealers Used Car Guide Company. The use of other manuals] Manuals may be approved by this department upon demonstration of need and suitability. If it is evident that an option has not been considered in [either or both] any of the [above] approved valuation manuals, the insurer shall consider the value, if any, of such option in arriving at the vehicle's value and shall [utilize] use the best available method to value such option. The insurer may deduct documented, reasonable dealer preparation charges, up to \$100, from the average of the retail values. The insurer shall provide to the insured, no later than the date of payment of the claim, a detailed copy of its calculation of the insured vehicle's total loss value, including the valuation of options [which] that are not considered in the base price of the vehicle.

Section 216.7(c)(4) is amended as follows:

(4) Right of recourse. [If, within] The insurer shall include in its settlement offer to the insured a written notice of the insured's right of recourse, and that the insured may exercise this right at any time from the date of the notice up to 35 calendar days after the mailing of the claim payment[.]. The notice shall also outline the right of recourse process as set forth in this section. If the insured notifies the insurer in writing within the requisite recourse period that the insured [notifies the insurer in writing that the insured] cannot purchase a comparable vehicle for the market value, as determined under the provisions of subparagraph (1)(i), (ii), (iii) or (v) or

paragraph (3) of this subdivision, the insurer shall reopen its claim file and shall offer, in its discretion and subject to applicable deductions, one of the following options to the insured:

(i) the insurer shall identify and offer for settlement an amount sufficient to purchase a substantially similar vehicle, as provided in subparagraph (1)(ii) of this subdivision; or

(ii) the insurer shall pay the insured the difference between the amount of its claim payment and the cost of a substantially similar vehicle, as provided in subparagraph (1)(ii) of this subdivision, located by the insured, or the insurer, upon consent of the insured, may purchase that vehicle for the insured.

Section 216.7(c)(9) is hereby repealed.